MOTION FILED
APR 16 1987

No. 109, Original

IN THE

Supreme Court of the United States

October Term, 1986

STATE OF OKLAHOMA AND
STATE OF TEXAS,
Plaintiffs,

v.

STATE OF NEW MEXICO,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT, AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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MOTION FOR LEAVE TO FILE COMPLAINT

Comes now the State of Oklahoma, by its Attorney General, The Honorable Robert H. Henry, and The State of Texas, by its Attorney General, The Honorable Jim Mattox, and hereby move the court for leave to file their Complaint against the State of New Mexico.

Respectfully submitted,

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COMPLAINT

The State of Oklahoma, by its Attorney General, the Honorable Robert H. Henry, and the State of Texas, by its Attorney General, the Honorable Jim Mattox, bring this suit against the defendant, State of New Mexico, seeking a decree commanding the State of New Mexico to comply with its duties and obligations under the Canadian River Compact, Act of May 17, 1952, 66 Stat. 74, and, for their cause of action, state:

1. The jurisdiction of the Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States, and Paragraph (a)(1), Section 1251, Title 28 of the United States Code.

2. The Canadian River is an interstate river which rises in northeastern New Mexico, near Raton. From its headwaters, the Canadian River flows south, then generally from the west to the east through New Mexico, Texas and Oklahoma. In Oklahoma, the Canadian River flows into the Arkansas River, a tributary of the Mississippi River.

3. By Act of April 29, 1950, Congress consented to the negotiation of a compact between New Mexico, Texas and Oklahoma for an equitable apportionment of the waters of the

Canadian River. 64 Stat. 93. On December 6, 1950, the Canadian River Compact ("Compact") was finalized and agreed to by the three states acting by and through their respective Compact commissioners. The Compact was thereafter ratified, approved and adopted as state law, by New Mexico by its Act of February 7, 1951, N.M. Comp. Stat. 1953, §75-34-3 (currently §§72-15-2 et seq.); Texas by its Act of May 10, 1951, ch. 153, 1951 Tex. Gen. Laws 260 (currently Texas Water Code Ann., §§43.001 et seq., Vernon 1972); and Oklahoma by its Act of March 22, 1951, 82 O.S. 1951, §§526.1 et seq. (currently 82 O.S. 1981, §§526.1 et seq.). By Act of May 17, 1952, the Canadian River Compact was consented to and enacted into federal law by Congress. 66 Stat. 74. A true, correct and complete copy of the Canadian River Compact is attached hereto as Appendix A and made a part hereof by reference.

4. The principal purposes of the Canadian River Compact were, and are, to equitably apportion the waters of the Canadian River among New Mexico, Texas and Oklahoma; promote interstate comity; remove causes of present and future interstate controversy; make secure and protect present developments within the compacting states; and provide for the construction of additional works for the use and conservation of the waters of the Canadian River. 64 Stat. 93, 66 Stat. 75.

5. The Canadian River Commission ("Commission") is the interstate agency charged with the duty and responsibility of administering the Compact. The Commission is composed of one commissioner from each signatory state and a federal commissioner who presides over Commission meetings but does not vote. The Compact requires a unanimous vote by the state commissioners for the taking of all actions by the Commission. Article IX, Canadian River Compact; 66 Stat. 76, 77.

6. To achieve its purpose of equitably apportioning the waters of the Canadian River, the Compact imposes specific numerical limitations regarding the waters of the Canadian

River flowing through New Mexico and Texas. The Compact limits the amount of "conservation storage" which may be available in New Mexico and the amount of water which may be impounded and retained in "conservation storage" in Texas. Articles IV, V and VI, Canadian River Compact; 66 Stat. 75, 76. The compact defines "conservation storage" as ". . . that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them." Paragraph (d), Article II, Canadian River Compact; 66 Stat. 75.

7. The Canadian River Compact thus equitably apportions the waters of the Canadian River by imposing a limitation on reservoir capacity for conservation storage in New Mexico and a limitation on the quantity of water in conservation storage in Texas, and by disallowing amounts in excess of those limitations. In this way, the Compact assures to the downstream states, namely Texas and Oklahoma, continuous and dependable quantities of Canadian River flow which exceed quantities allowed to be impounded, retained in storage, and beneficially used by and in the state or states upstream.

8. Over the years, the waters of the Canadian River have undergone substantial conservation storage development in New Mexico, Texas and Oklahoma. Reservoir storage capacity, in excess of four million (4,000,000) acre-feet, has been established on the waters of the Canadian River in the three states through the construction of at least one hundred twenty-three (123) reservoirs, forty-five (45) of which are located in New Mexico, twenty-five (25) in Texas and fifty-three (53) in Oklahoma. As a result of these and planned future developments, and in reliance on the apportionments made under the Compact, New Mexico, Texas and Oklahoma, and their citizens, place substantial dependence on the waters,

and continued flow, of the Canadian River for municipal, industrial, domestic, recreation and fish and wildlife maintenance uses in their respective states.

9. Under Paragraph (b) of Article IV of the Compact, New Mexico is allowed free and unrestricted use of all waters originating in the drainage basin of the Canadian River in New Mexico below Conchas Dam, subject to the limitation that the amount of conservation storage in New Mexico, or reservoir storage capacity available for impounding those waters, cannot exceed an aggregate total capacity of two hundred thousand (200,000) acre-feet.

10. During 1963–1964, New Mexico constructed Ute Dam and Reservoir on the Canadian River below Conchas Dam near the town of Logan, New Mexico. Ute Reservoir is owned, operated and controlled by the defendant State of New Mexico, acting by and through a designated state agency, the New Mexico Interstate Stream Commission. As originally constructed, Ute Reservoir had the capacity to impound and store a total of approximately 109,600 acre-feet of Canadian River water. In 1982, New Mexico commenced actual construction to enlarge Ute Reservoir and, in 1984, that construction was completed. As enlarged, Ute Reservoir has the capacity to impound and retain in storage a total of approximately 272,800 acre-feet of Canadian River basin water below Conchas Dam. Of this 272,800 acre-feet of total impoundment and reservoir storage capacity, approximately 235,718 acre-feet is available to, and usable by, New Mexico as "conservation storage." The remaining 37,082 acre-feet of capacity is either unreleasable dead storage or filled with sediment.

11. In addition to Ute Dam and Reservoir, there are located on the Canadian River below Conchas Dam in New Mexico the following dams and reservoirs, having the respective conservation storage capacities indicated:

DAM AND RESERVOIR	CONSERVATION STORAGE
Clayton Reservoir	4,082 acre-feet
Hittson Creek Reservoir	123 acre-feet
Aragon Reservoir	281 acre-feet
Smithson Reservoirs (3)	357 acre-feet
Juaquilla Reservoir	180 acre-feet
Gardner Reservoir	239 acre-feet
Poling Reservoir	178 acre-feet
Snyder Reservoir	223 acre-feet
Weatherly Reservoir	1,082 acre feet
Total (Excluding Ute Reservoir)	6,745 acre-feet

12. With the enlargement of Ute Reservoir, thereby creating a reservoir having a conservation storage capacity of 235,718 acre-feet, and by reason of the 6,745 acre-feet of conservation storage available from the nine (9) additional reservoirs identified and listed in paragraph eleven above, there currently exists, and continues to exist, at least 242,463 acre-feet of conservation storage in New Mexico available for impounding waters of the Canadian River which originate in the drainage basin of the Canadian River below Conchas Dam. This amount exceeds New Mexico's conservation storage apportionment, limitation and entitlement, under Paragraph (b), Article IV, of the Compact, by at least 42,463 acre-feet. New Mexico has, therefore, knowingly and willfully violated, and continues to violate, its express obligations under, and the terms and provisions of, the Canadian River Compact.

13. New Mexico's Compact violation has caused, and, if not remedied, shall continue to cause, direct, immediate, grave and irreparable injury and harm to the plaintiff State of Texas and its citizens by preventing Texas from receiving the amount of water that it is entitled to receive under the Compact. Most of the Canadian River flows which Texas receives from New Mexico are captured in Lake Meredith, which is located on the Canadian River north of Amarillo, Texas. The

waters of Lake Meredith are allocated and distributed to the cities of Amarillo, Lubbock, Plainview, and eight other cities and towns in the Texas High Plains. Because of prolonged drought, Lake Meredith has never filled, and for many years has operated well below capacity. Therefore, although the yield of Lake Meredith has been totally allocated to the eleven cities and towns supplied by the reservoir, the reservoir is not now able to supply the cities with their full allocations. New Mexico's Compact violation has further, and substantially, impaired the yield of Lake Meredith and its ability to supply the drinking water and other municipal and industrial water requirements of these cities and towns and their inhabitants. The ability of the State of Texas to use the Canadian River flows as a dependable source of water for its inhabitants has thus been impaired and its reasons for joining in the Compact have been nullified.

14. The New Mexico Compact violation has resulted in, and, if not remedied, shall continue to result in, grave and irreparable injury and harm to the plaintiff State of Oklahoma and its citizens. Just as Texas relies and depends on receiving its Compact share of Canadian River flows from New Mexico, and just as Texas has suffered, and shall continue to suffer, harm, injury and deprivation in entitlement from declining Canadian River flows from New Mexico, Oklahoma has suffered, and shall continue to suffer, harm, injury and deprivation in entitlement as a result of declining Canadian River flows from New Mexico into Texas, and consequentially, from Texas into Oklahoma. Since the construction and enlargement of Ute Reservoir, and the construction of Lake Meredith, Canadian River flows into Oklahoma have declined from approximately 591 cubic-feet per second to a post-construction average annual amount of approximately 84 cubic-feet per second. Oklahoma states further that it has identified sites on the Canadian River which are feasible and needed for future reservoir and conservation storage development in Oklahoma, and that these developments are dependent on Oklahoma receiving its Compact share of Canadian River flows from Texas. New Mexico's Compact interpretation, and Compact violation thereunder, impairs Oklahoma's ability to proceed with these planned and needed developments, by making Oklahoma's realization of Compact apportioned Canadian River waters totally undependable for conservation storage development purposes.

15. Texas and Oklahoma have not consented to, nor have they otherwise allowed or permitted, New Mexico to exceed its conservation storage apportionment and limitations imposed under Paragraph (b) of Article IV of the Canadian River Compact. Further, since as early as July, 1982, Texas and Oklahoma, acting officially by and through their respective commissioners to the Canadian River Commission, have repeatedly expressed their respective positions, concerns and objections to New Mexico in reference to its actions and Compact violation of developing and maintaining conservation storage in excess of amounts allowed under the Compact. At numerous official meetings of the Commission, and in various manners, Oklahoma and Texas have expressed their objections to New Mexico. New Mexico has, nevertheless, consistently refused, and continues to refuse, to acknowledge or cease its violation, and to comply with its duties and obligations under the Compact.

16. In defense of its actions and conduct, New Mexico has espoused various Compact theories, interpretations and constructions which, in New Mexico's view, excuse its violation. New Mexico has asserted that although it possesses conservation storage capacity in excess of amounts allowed under the Compact, much of that capacity is not "conservation storage" under the Compact definition of that phrase. New Mexico contends that much of its storage and storage capacity is for the impoundment and retention of water for recreation and for fish and wildlife purposes, and this water, by New Mexico intrastate agency contract, is not available to New Mexico for "release" for domestic, municipal, irrigation and industrial uses and purposes. New Mexico asserts, therefore, that its

reservoir storage capacities for recreation, and fish and wildlife purposes, or for any other purpose except domestic, municipal, irrigation and industrial purposes, do not constitute "conservation storage" under the Compact, but are entirely beyond the ambit of the Compact and not subject to equitable apportionment under the Compact. New Mexico accordingly states that it can construct and maintain as much impoundment and reservoir storage capacity, regarding the waters of the Canadian River in New Mexico, as it wishes under such circumstances and conditions.

17. If New Mexico's violation, and the Compact interpretations and constructions upon which it seeks to excuse the violation, are allowed to exist and continue without relief from this Court, the only Court to which these plaintiffs have resort, the Compact shall be rendered totally meaningless because of New Mexico's resultant ability to impound and retain in storage unlimited quantities of Canadian River water below Conchas Dam. As to that threat and resultant harm to Texas and Oklahoma, New Mexico has stated, officially and of record, its plan and intention to further develop the waters of the Canadian River in New Mexico below Conchas Dam pursuant to its erroneous interpretation and construction of the Compact. On or about February 14, 1986, the New Mexico Interstate Stream Commission filed its "Notice of Intention To Make Formal Application For Permit" with the New Mexico State Engineer, the New Mexico public official authorized by state law to allow and approve such permits and appropriations. The notice expresses the intention of the New Mexico Interstate Stream Commission to make application for a permit to appropriate *all* unappropriated waters of the Canadian River and its tributaries between Ute Dam and the New Mexico–Texas state line, the waters to be appropriated by both direct diversion and *storage*. Pursuant to the notice, the water would be appropriated, stored and used for, among other things, recreation, and fish and wildlife purposes by the New Mexico Interstate Stream Commission.

18. Texas and Oklahoma have heretofore vigorously pursued and exhausted all possible remedies, other than litigation, available to correct New Mexico's existing and continuing Compact violation and to obtain New Mexico's compliance with the Compact. Texas and Oklahoma have no alternative legal remedy available to them for purposes of correcting New Mexico's violation and obtaining its compliance with the Compact, nor do they have any alternative remedy available for protecting their rights and interests under the Canadian River Compact, other than through the exercise of this Court's exclusive and original jurisdiction in this case and controversy. Absent the acceptance and exercise of original jurisdiction by this Court, Texas and Oklahoma and their citizens shall continue to have their rights under the Canadian River Compact violated by New Mexico, and shall continue to sustain the grave and irreparable harm and injury they are presently sustaining as a result of New Mexico's wrongful acts and conduct.

WHEREFORE, Texas and Oklahoma respectfully pray that this Honorable Court assume and exercise its original and exclusive jurisdiction in this case, and that the court enter Orders, Decrees and Opinions enjoining the Canadian River Compact violation by New Mexico, described above, and commanding the State of New Mexico, acting by and through its appropriate state agencies and officers, to take such remedial steps and actions as may be necessary and required to bring it into compliance with the terms and provisions of the Compact. Texas and Oklahoma additionally pray that this Honorable Court grant and provide such other and further relief as the court may find and deem necessary and appropriate.

Respectfully submitted,

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APPENDIX A

CANADIAN RIVER COMPACT

The State of New Mexico, the State of Texas, and the State of Oklahoma, acting through their Commissioners, John H. Bliss for the State of New Mexico, E. V. Spence for the State of Texas, and Clarence Burch for the State of Oklahoma, after negotiations participated in by Berkeley Johnson, appointed by the President as the representative of the United States of America, have agreed respecting Canadian River as follows:

ARTICLE I

The major purposes of this Compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the States; and to provide for the construction of additional works for the conservation of the waters of Canadian River.

ARTICLE II

As used in this Compact:

(a) The term "Canadian River" means the tributary of Arkansas River which rises in northeastern New Mexcio and flows in an easterly direction through New Mexico, Texas and Oklahoma and includes North Canadian River and all other tributaries of said Canadian River.

(b) The term "North Canadian River" means that major tributary of Canadian River officially known as North Canadian River from its source to its junction with Canadian River and includes all tributaries of North Canadian River.

(c) The term "Commission" means the agency created by this Compact for the administration thereof.

(d) The term "conservation storage" means that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and

industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production and sediment control, or any of them.

ARTICLE III

All rights to any of the waters of Canadian River which have been perfected by beneficial use are hereby recognized and affirmed.

ARTICLE IV

(a) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian River above Conchas Dam.

(b) New Mexico shall have free and unrestricted use of all waters originating in the drainage basin of Canadian River in New Mexico below Conchas Dam, provided that the amount of conservation storage in New Mexico available for impounding these waters which originate in the drainage basin of Canadian River below Conchas Dam shall be limited to an aggregate of two hundred thousand (200,000) acre-feet.

(c) The right of New Mexico to provide conservation storage in the drainage basin of North Canadian River shall be limited to the storage of such water as at the time may be unappropriated under the laws of New Mexico and of Oklahoma.

ARTICLE V

Texas shall have free and unrestricted use of all waters of Canadian River in Texas, subject to the limitations upon storage of water set forth below:

(a) The right of Texas to impound any of the waters of North Canadian River shall be limited to storage on tributaries of said River in Texas for municipal uses, for household and domestic uses, livestock watering, and the irrigation of lands which are cultivated solely for the purpose of providing food

and feed for the householders and domestic livestock actually living or kept on the property.

(b) Until more than three hundred thousand (300,000) acre-feet of conservation storage shall be provided in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs in the drainage basin of Canadian River east of the 97th meridian, the right of Texas to retain water in conservation storage, exclusive of waters of North Canadian River, shall be limited to five hundred thousand (500,000) acre-feet; thereafter the right of Texas to impound and retain such waters in storage shall be limited to an aggregate quantity equal to two hundred thousand (200,000) acre-feet plus whatever amount of water shall be at the same time in conservation storage in reservoirs in the drainage basin of Canadian River in Oklahoma, exclusive of reservoirs in the drainage basin of North Canadian River and exclusive of reservoirs east of the 97th meridian; and for the purpose of determining the amount of water in conservation storage, the maximum quantity of water in storage following each flood or series of floods shall be used; provided, that the right of Texas to retain and use any quantity of water previously impounded shall not be reduced by any subsequent application of the provisions of this paragraph (b).

(c) Should Texas for any reason impound any amount of water greater than the aggregate quantity specified in paragraph (b) of this Article, such excess shall be retained in storage until under the provisions of said paragraph Texas shall become entitled to its use; provided, that, in event of spill from conservation storage, any such excess shall be reduced by the amount of such spill from the most easterly reservoir on Canadian River in Texas; provided further, that all such excess quantities in storage shall be reduced monthly to compensate for reservoir losses in proportion to the total amount of water in the reservoir or reservoirs in which such excess water is being held; and provided further that on demand by the Commissioner for Oklahoma the remainder of any such excess quantity of water in storage shall be released into the channel of Canadian River at the greatest rate practicable.

ARTICLE VI

Oklahoma shall have free and unrestricted use of all waters of Canadian River in Oklahoma.

ARTICLE VII

The Commission may permit New Mexico to impound more water than the amount set forth in Article IV and may permit Texas to impound more water than the amount set forth in Article V; provided, that no State shall thereby be deprived of water needed for beneficial use; provided further that each such permission shall be for a limited period not exceeding twelve (12) months; and provided further than no State or user of water within any State shall thereby acquire any right to the continued use of any such quantity of water so permitted to be impounded.

ARTICLE VIII

Each State shall furnish to the Commission at intervals designated by the Commission accurate records of the quantities of water stored in reservoirs pertinent to the administration of this Compact.

ARTICLE IX

(a) There is hereby created an interstate administrative agency to be known as the "Canadian River Commission." The Commission shall be composed of three (3) Commissioners, one (1) from each of the signatory States, designated or appointed in accordance with the laws of each such State, and if designated by the President an additional Commissioner representing the United States. The President is hereby requested to designate such a Commissioner. If so designated, the Commissioner representing the United States shall be the presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission. All members of the Commission must be present to constitute a quorum. A unanimous vote of the Commissioners for the

three (3) signatory States shall be necessary to all actions taken by the Commission.

(b) The salaries and personal expenses of each Commissioner shall be paid by the government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact and which are not paid by the United States shall be borne equally by the three (3) States and be paid by the Commission out of a revolving fund hereby created to be known as the "Canadian River Revolving Fund." Such fund shall be initiated and maintained by equal payments of each State into the fund in such amounts as will be necessary for administration of this Compact. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Said fund shall not be subject to the audit and accounting procedures of the States. However, all receipts and disbursements of funds handled by the Commission shall be audited by a qualifed independent public accountant at regular intervals and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission may:

(1) Employ such engineering, legal, clerical, and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;

(2) Enter into contracts with appropriate Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records, and for the preparation of reports;

(3) Perform all functions required of it by this Compact and do all things necessary, proper, or convenient in the performance of its duties hereunder, independently or in cooperation with appropriate governmental agencies.

(d) The Commission shall:

(1) Cause to be established, maintained and operated such stream and other gaging stations and evaporation stations as may from time to time be necessary for proper admin-

istration of the Compact, independently or in cooperation with appropriate governmental agencies;

(2) Make and transmit to the Governors of the signatory States on or before the last day of March of each year, a report covering the activities of the Commission for the preceding year;

(3) Make available to the Governor of any signatory state, on his request, any information within its possession at any time, and shall always provide access to its records by the Governors of the States, or their representatives, or by authorized representatives of the United States.

ARTICLE X

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States to the Indian Tribes;

(b) Subjecting any property of the United States, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(c) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact;

(d) Applying to, or interfering with, the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, not inconsistent with its obligations under this Compact;

(e) Establishing any general principle or precedent applicable to other interstate streams.

ARTICLE XI

This Compact shall become binding and obligatory when it shall have been ratified by the Legislature of each State and approved by the Congress of the United States. Notice of ratification by the Legislature of each State shall be given by the Governor of that State to the Governors of the other States and to the President of the United States. The President is hereby requested to give notice to the Governor of each State of approval by the Congress of the United States.

IN WITNESS WHEREOF, The Commissioners have executed four (4) counterparts hereof, each of which shall be and constitute an original, one (1) of which shall be deposited in the archives of the Department of State of the United States, and (1) of which shall be forwarded to the Governor of each State.

DONE at the City of Santa Fe, State of New Mexico, this 6th day of December, 1950.

/s/ John H. Bliss

John H. Bliss
Commissioner for the State of New Mexico

/s/ E. V. Spence

E. V. Spence
Commissioner for the State of Texas

/s/ Clarence Burch

Clarence Burch
Commissioner for the State of Oklahoma

APPROVED:

/s/ Berkeley Johnson

Berkeley Johnson
Representative of the United States of America

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STATEMENT OF THE CASE

By this action, the States of Oklahoma and Texas seek a decree commanding the State of New Mexico to comply with its duties and obligations under the Canadian River Compact, Act of May 17, 1952, 66 Stat. 74.

The Canadian River Compact is an interstate agreement and federal law which equitably apportions the waters of the Canadian River among Oklahoma, Texas and New Mexico. The Compact apportions those waters by imposing a limitation on the amount of conservation storage New Mexico may maintain for impounding and retaining Canadian River waters, and a limitation on the amount of Canadian River waters Texas may impound and retain in conservation storage. New Mexico has violated its obligations under the Compact by constructing and maintaining conservation storage for the waters of the Canadian River in New Mexico in excess of the amount allowed under the Compact. New Mexico's violation has deprived Oklahoma and Texas of their respective entitle-

ments to Canadian River waters apportioned under the Compact, and has caused, and will continue to cause if not remedied by the Court, substantial and irreparable injury to Oklahoma and Texas.

STATEMENT OF FACTS

The Canadian River, a major tributary of the Arkansas River, has long been viewed by New Mexico, Texas and Oklahoma as an extremely valuable and important natural resource, capable of satisfying much of the water supply needs of citizens and industries in the arid plains of northeastern New Mexico, the Texas High Plains and west central Oklahoma. To achieve this capability, New Mexico, Texas and Oklahoma recognized that the development and conservation of Canadian River waters, in each of the three states, would be necessary, and that an interstate agreement apportioning those waters among the three states would be required before that development and conservation could occur.

A compact apportioning the waters of the Canadian River among New Mexico, Texas and Oklahoma was first attempted in 1926. Although a compact draft was negotiated, the draft was never ratified by all three states, and the compact attempt failed. Efforts to arrive at a compact were renewed in mid-1949, due largely to the fact that a compact became a Congressionally imposed prerequisite to construction of the then proposed Sanford Project (now Lake Meredith) on the Canadian River in the Texas Panhandle. Act of December 29, 1950, 64 Stat. 1124; United States Department of the Interior, Bureau of Reclamation, "Plan for Development, Canadian River Project, Texas," Project Planning Report No. 5-12.22-1 (June, 1949).

By its Act of April 29, 1950, Congress adopted Public Law 81-491 (64 Stat. 93) authorizing New Mexico, Texas and Oklahoma to enter into negotiations for a compact equitably apportioning the waters of the Canadian River. Compact negotiations were conducted by authorized representatives from each state between June 30 and December 6, 1950. On

December 6, 1950, a final draft of a compact was agreed to and signed by the New Mexico, Texas and Oklahoma representatives. Thereafter, the Compact was adopted and ratified by each signatory state, consented to by Congress and signed by the President. Act of May 17, 1952, 66 Stat. 74.

The Compact created an interstate agency, known as the "Canadian River Commission," to administer and enforce the Compact. Compact, Article IX (a). The Commission consists of four (4) members (commissioners), one commissioner from each of the three signatory states and one non-voting federal commissioner who serves as presiding officer. Under the Compact, a unanimous vote of the commissioners for the three signatory states is required for the taking of any actions by the Commission.

As stated in the Compact and its authorizing federal legislation, the major purposes of the Compact are to equitably apportion the waters of the Canadian River among New Mexico, Texas and Oklahoma; promote interstate comity; remove causes of present and future controversy; make secure and protect present developments within the states; and provide for the construction of additional works for the conservation of the Canadian River. 64 Stat. 93; 66 Stat. 75.

The Compact equitably apportions the waters of the Canadian River, protects present developments and provides for future developments, by imposing limitations on the amount of Canadian River conservation storage in New Mexico and the amount of Canadian River waters in conservation storage in Texas. The Compact defines "conservation storage" to mean:

> ". . . that portion of the capacity of reservoirs available for the storage of water for subsequent release for domestic, municipal, irrigation and industrial uses, or any of them, and it excludes any portion of the capacity of reservoirs allocated solely to flood control, power production, and sediment control, or any of them." (Canadian River Compact, Article II (d))

Under Article IV of the Compact, New Mexico is allowed free and unrestricted use of all waters originating in the drain-

age basin of the Canadian River in New Mexico below Conchas Dam, subject to the limitation that the amount of conservation storage in New Mexico available for impounding those waters, is limited to an aggregate of 200,000 acre-feet. The Compact thereby ensures that all Canadian River flows which exceed amounts capable of being impounded and stored within this limitation will be allowed to flow downstream to Texas and Oklahoma for their respective use and development.

As set out in the Plaintiffs' Complaint, there exists in New Mexico at least 242,463 acre-feet of conservation storage available for impounding waters of the Canadian River below Conchas Dam. This storage capacity exceeds New Mexico's Compact apportionment by at least 42,463 acre-feet. The bulk of this excess stems from New Mexico's recent enlargement of Ute Reservoir, a reservoir on the Canadian River below Conchas Dam near the town of Logan. Ute Reservoir was originally constructed in 1963–1964, but was substantially enlarged by actions commenced in 1982 and completed in 1984. As enlarged, Ute Reservoir has a total impoundment capacity of 272,800 acre-feet. Approximately 235,718 acre-feet of that total capacity is available to, and usable by, New Mexico as "conservation storage." The remaining 37,082 acre-feet of capacity is either unreleasable dead storage or storage filled with sediment.

In an attempt to defend its excess conservation storage, New Mexico has adopted and advanced several erroneous, inflexible and unreasonable interpretations of key Compact provisions. The position it has relied upon most heavily is an unsound construction of Article II (d), which defines the phrase "conservation storage." Under that construction, New Mexico asserts that much of its present reservoir storage capacity below Conchas Dam is not "conservation storage," since it has been allocated by New Mexico for the impoundment, storage and permanent retention of water for recreation and fish and wildlife uses. New Mexico contends that, by contract between New Mexico state agencies, it is obligated to capture,and retain in storage,waters of the Canadian River for

such recreation and fish and wildlife uses. New Mexico further declares that such capacities involve waters stored but not "available for . . . subsequent release for domestic, municipal, irrigation and industrial uses," and, therefore, such capacities are not "conservation storage" under the Compact language of Article II (d). New Mexico asserts this position despite the fact that, because of the design and location of the outlet works in the dam and reservoir, most of such capacities are releasable for use in New Mexico. New Mexico has accordingly adopted, and continues to maintain, the position that reservoir storage capacity designated for such uses and purposes is not "conservation storage" for which it is accountable under the Compact, in any respect whatsoever, to the downstream states.

The New Mexico interpretation and position are clearly contrary to the Compact. New Mexico, under its interpretation, could impound and permanently retain in storage in New Mexico all waters of the Canadian River and thereby prevent any river flow to downstream states and users. To accomplish this, New Mexico would only need to designate additional reservoir storage capacities for recreation or fish and wildlife uses,or some other use or purpose not expressly mentioned in the Compact's definition of conservation storage, e.g., storage capacity for the capture and permanent retention of water which would not be available for subsequent release for Compact-mentioned uses and purposes. New Mexico has acknowledged that such a conclusion and consequence could result from its interpretation of the Compact. Transcript of proceedings, September 29, 1982, Meeting, Canadian River Commission, pgs. 17, 66–67.

The plain meaning and purpose of theCompact's Article II (d) definition of conservation storage is to include, for equitable apportionment purposes, reservoir storage capacities for the capture and retention of water within a signatory state for subsequent release for such uses as domestic, municipal, irrigation and industrial uses. In contrast to these capacities, the definition of conservation storage does not include storage capacities for the impoundment and retention of unusable

waters (dead storage allocated solely for sediment control) or waters retained on a temporary basis only, e.g., flood control and power production waters which would be temporarily captured but routinely released and allowed to flow unused to the downstream states. In other words, the obvious objective of the definition is to encompass and limit waters impounded by a signatory state for its beneficial use and enjoyment and which are not, therefore, available to downstream states. New Mexico's position that reservoir storage capacities for the capture and permanent retention of water for recreation or fish and wildlife purposes is not conservation storage for which it is accountable under the Compact is contrary to this objective, is totally unsound and unreasonable and, if not corrected, will defeat the very purposes of the Compact and render its apportionments meaningless.

In reliance on its erroneous construction of the Compact, New Mexico has exceeded Compact apportionment limitations, and has, of record, given notice of its plan and intention to exceed those limitations by even greater quantities. As noted in Plaintiffs' Complaint, New Mexico already has exceeded its Compact apportionment by roughly 42,000 acre-feet. On or about February 14, 1986, the New Mexico Interstate Stream Commission, a New Mexico state agency, filed its "Notice of Intention to Make Formal Application for Permit" with the New Mexico State Engineer. The notice expresses the plan and intention of the New Mexico Interstate Stream Commission to apply for a permit to appropriate "[a]ll unappropriated waters of the Canadian River and its tributaries between Ute Dam near Logan, New Mexico, and the New Mexico-Texas state line." According to the notice, the waters will be appropriated by "storage," as well as by direct diversion, and the appropriation would be for, among other things, recreation and fish and wildlife purposes.

Under New Mexico's wrongful construction and application of the Compact, these planned reservoir storage capacities for recreation and fish and wildlife purposes will be exempt from the Compact and will further diminish or eliminate Canadian River flows to the downstream states. The notice

has, therefore, had a chilling and detrimental effect on present and future development of Canadian River waters within Texas and Oklahoma, by causing great uncertainty as to the future availability and reliability of Canadian River flows from New Mexico.

Aside from New Mexico's planned construction of additional conservation storage capacities, New Mexico's present Compact violation of excess conservation storage is causing substantial and irreparable injury to Texas and its citizens and, if not remedied, will continue doing so indefinitely by preventing Texas from receiving the amount of water it is entitled to receive under the Compact. Most of the Canadian River waters Texas receives from New Mexico are captured in Lake Meredith, and are then distributed to eleven cities and towns in the arid Texas High Plains. These cities and towns, and their approximately 450,000 inhabitants, are greatly dependent upon these waters for drinking water and for other municipal and industrial uses since the Canadian River is the only substantial source of surface water in the region. See S. Rep. No. 2110, 81st Cong., 2d Sess., reprinted in 1950 U.S. Code Cong. Serv. 4284, 4286-7. The only substantial source of groundwater in the region, the Ogallala Aquifer, is a rapidly dehydrating aquifer and is not, therefore, a dependable or long-term alternative source of water. New Mexico's construction and maintenance of conservation storage in excess of the amount permitted under the Compact have reduced the yield of Lake Meredith and impaired the ability of the State of Texas to furnish water for the needs of its inhabitants. Consequently, the primary reasons that Texas entered into the Compact, i.e. to obtain an equitable share of Canadian River waters and to establish a dependable water supply reservoir (Lake Meredith) on the river for the Texas High Plains, have been substantially negated.

The New Mexico violation is also causing substantial and irreparable harm and injury to Oklahoma and its citizens. Since the construction and enlargement of New Mexico's Ute Reservoir and Texas' Lake Meredith, Canadian River flows from Texas into Oklahoma have declined from an amount

of approximately 591 cubic-feet per second to a post-construction average annual amount of approximately 84 cubic-feet per second. Unquestionably, the New Mexico Compact violation (excessive conservation storage) will cause greater quantities of Canadian River flow to be captured and retained by and in Texas and, in turn, will reduce flows into Oklahoma. This domino effect of the New Mexico violation deprives Oklahoma and its citizens of apportionments made under the Compact, jeopardizes the future use and enjoyment of existing developments on the Canadian River in Oklahoma, and prevents Oklahoma from proceeding with future planned developments which are dependent on Oklahoma receiving its share of Canadian River waters apportioned under the Compact.

Oklahoma and Texas have made repeated attempts to remedy the instant dispute by means of cooperation and through the good offices of the Canadian River Commission. Oklahoma, by its letter of July 28, 1982, to New Mexico, gave notice of its concerns regarding the then proposed Ute Reservoir enlargement and the resultant excess conservation storage under the Compact. This letter brought about the exchange of further correspondence and, ultimately, the calling of a special meeting of the Canadian River Commission on September 29, 1982. Although a meeting was held and the matter was discussed by the states at great length, New Mexico continued to maintain its position, and no resolution of the controversy was reached. The controversy was again brought before the commission at its regular annual meetings of April 14, 1983; March 6, 1984; April 2, 1985 and March 12, 1986. Because Commission action can be taken only by a unanimous vote of state commissioners, and because of New Mexico's veto ("no" vote) power, repeated attempts by Oklahoma and Texas to obtain remedial action and New Mexico's compliance through the Commission have been, and shall continue to be, prevented and defeated by New Mexico.

In addition to exhaustive discussions of the controversy by the commissioners at special and regular annual Commission

meetings, the Commission attempted to seek a resolution of the dispute through its Legal Advisory Committee. That Committee is composed of legal representatives from each of the signatory states. The Commission assigned to this Committee the task of researching and reporting on issues related directly to New Mexico's Ute Dam enlargement, e.g., questions relating to the meaning of conservation storage under the Compact. Although a report was submitted by the Texas and Oklahoma Legal Advisory Committee members to the Commission at its regular meeting of March 6, 1984, the New Mexico committee member submitted no statement of legal position on the questions assigned. Accordingly, attempts to resolve the controversy through the Commission's Legal Advisory Committee failed.

Oklahoma and Texas have pursued and exhausted every possible alternative for resolving this controversy. Despite their efforts, New Mexico has refused to alter its position and comply with the Compact. A non-judicial resolution of the dispute is not possible since a paralyzing impasse exists on the Commission, with no other or further remedial recourse being available to Oklahoma and Texas. Allowing this impasse and dispute to remain and continue unresolved will only serve to benefit New Mexico with continuing and increasing substantial harm and detriment to Texas and Oklahoma. The dispute and issues presented are amenable to judicial resolution, and no other means of resolution and remedy exist.

POINTS OF LAW

The present action is a controversy between the State of New Mexico and the States of Oklahoma and Texas. Jurisdiction is invoked under Article III, Section 2, Clause 2, of the United States Constitution, and 28 U.S.C. Section 1251(a)(1).

The controversy presented is a conflict of Oklahoma and Texas with New Mexico regarding their respective rights, and the rights of their citizens, in and to the waters of the Canadian River, an interstate stream. Decisions of the Court have recognized that controversies and conflicts of this particular

and specific nature are a proper subject for adjudication and determination by the Court through the invocation and exercise of its original and exclusive jurisdiction. *Colorado v. New Mexico*, 459 U.S. 176 (1982); *Arizona v. California*, 373 U.S. 546 (1963); *Nebraska v. Wyoming*, 325 U.S. 589 (1945); *Colorado v. Kansas*, 320 U.S. 383 (1943); *Wyoming v. Colorado*, 259 U.S. 419 (1922). Specifically, the controversy presented seeks an adjudication and enforcement of rights established, and prior equitable apportionments made, by a compact apportioning the waters of an interstate stream between states signatory to the compact. In *Texas v. New Mexico*, 421 U.S. 927 (1975), the Court exercised its original and exclusive jurisdiction for purposes of adjudicating and resolving issues and conflicts of the same nature and magnitude presented here. See also, *Virginia v. West Virginia*, 206 U.S. 290 (1907).

As set out in the Complaint, New Mexico is acting, and shall continue to so act, if not prevented from doing so by decree of the Court, in violation and breach of its legal duties and obligations under the Canadian River Compact, 66 Stat. 74. That violation consists of New Mexico's constructing, possessing and maintaining conservation storage capacity in reservoirs in New Mexico on the Canadian River below Conchas Dam in excess of the capacity allowed under Article IV (b) of this Compact. That excess has caused, and shall continue to cause, if not remedied by decree of the Court, grave and irreparable harm and injury to Texas and Oklahoma and their citizens. By its own declarations of intent made of record, New Mexico shall continue in the future as it has in the past, violating the Compact by establishing and maintaining even greater quantities of conservation storage in New Mexico than its current excess. Upon New Mexico's implementing those intentions, the harm and injury currently being sustained by Oklahoma and Texas shall dramatically worsen. Accordingly, Plaintiffs' Complaint presents a justiciable controversy and question of federal law which can be determined and resolved only by the Court. See *Petty v. Tennessee-Missouri Commission*, 359 U.S. 275 (1959); *State ex rel. Dyer et al v. Sims*, 341 U.S. 22 (1951).

Oklahoma and Texas have pursued and exhausted every means possible by which the instant conflict and controversy might have been resolved without the necessity of proceedings before, and relief from, the Court. No other form of relief is available to Texas and Oklahoma for purposes of resolving the controversy and, absent the Court's exercise of jurisdiction, the substantial injury and harm presently being sustained shall not only continue, but shall unquestionably increase. Oklahoma and Texas seek nothing more than to be relieved of the wrongful harm and injury currently being sustained by them, and to have made and entered by the Court an appropriate decree commanding New Mexico's compliance with the terms and provisions of the Canadian River Compact and its duties and obligations thereunder. Oklahoma and Texas state that the Court's exercise of original jurisdiction in this cause will result in a prompt and efficient resolution of the current controversy, and that no other means for accomplishing that critical and essential result exist.

It is, therefore, respectfully requested by Oklahoma and Texas that their Motion for Leave to File Complaint be sustained and granted.

Respectfully submitted,

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